

Message Text

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ACTION L-03

INFO OCT-01 AF-10 ARA-10 EUR-12 NEA-11 ISO-00 AID-05
CEA-01 CIAE-00 COME-00 EB-08 EA-10 FRB-03 INR-10
IO-13 NSAE-00 ICA-11 OPIC-03 SP-02 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 SS-15 JUSE-00 /134 W
-----079408 060004Z /63

R 052326Z JUN 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 2664
INFO ALL OECD CAPITALS
USMISSION USUN
AMEMBASSY BOGOTA
AMEMBASSY BRASILIA
AMEMBASSY CARACAS
AMEMBASSY KINSHASA
AMEMBASSY LAGOS
AMEMBASSY LUSAKA
AMEMBASSY MEXICO
AMEMBASSY TEHRAN

C O N F I D E N T I A L SECTION 01 OF 02 PARIS 17852

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USEEC

FOR THE DEPUTY SECRETARY, L; PASS TREASURY, JUSTICE,
COMMERCE

E.O. 11652: GDS
TAGS: EINV, ECOSOC, UN, OECD
SUBJECT: ECOSOC WORKING GROUP ON CORRUPT PRACTICES

REF: (A) STATE 127544, (B) STATE 135161

1. SUMMARY: BILATERAL CONSULTATIONS WITH FRANCE WENT
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EXTREMELY WELL. OECD CONSULTATIONS ON AGREEMENT ON
ILLICIT PAYMENTS MADE SUBSTANTIAL PROGRESS TOWARDS
CONSENSUS ON BASIC TERMS OF AN AGREEMENT IN AN ATMO-
SPHERE MARKEDLY IMPROVED OVER PRIOR OECD CONSULTATIONS.
TWO MAJOR PROBLEMS REMAINING ARE (1) UK DESIRE, SHARED
IN VARYING DEGREES BY FRG, JAPAN AND BELGIUM, TO RE-
SERVE RIGHT OF HOME COUNTRY NOT TO ENFORCE CRIMINAL

LAW IF HOST COUNTRY DOES NOT TAKE COMMENSURATE ACTION AND (2) POSSIBILITY THAT OECD COUNTRIES MIGHT BE UNWILLING TO PROCEED WITH DIPLOMATIC CONFERENCE IF G-77 PRESS PROPOSALS TO PROHIBIT PAYMENTS OF ROYALTIES AND TAXES TO "ILLEGAL MINORITY REGIMES IN SOUTHERN AFRICA". THERE APPEARS TO BE GENERAL OECD SUPPORT FOR TERRITORIAL LINK AND EXCLUSION OF FACILITATING PAYMENTS UNDER NEW FORMULA TABLED BY U.S. DEL. THERE ALSO APPEARS TO BE SUPPORT FOR SUBSTANCE OF US DRAFT TEXT FOR OECD MINISTERIAL COMMUNIQUE ALTHOUGH SEVERAL DELEGATIONS CAN BE EXPECTED TO PROPOSE DRAFTING CHANGES. END SUMMARY.

2. IN BILATERAL DISCUSSION WITH FRENCH OFFICIALS, MAY 30, QUAI LEGAL ADVISOR DE LA CHARRIERE AGREED, DESPITE CONCERNS OF GOF NEGOTIATING TEAM, THAT FRANCE COULD ACCEPT BASIC U.S. MODIFICATIONS OF FRENCH PROPOSAL FOR CRIMINALIZATION, INCLUDING NEW US TEXT ON ARTICLE 4 (JURISDICTION) DEALING WITH TERRITORIAL LINK AND GREASE PAYMENTS. HE CONCLUDED THAT FRANCE HAD ONLY TWO BASIC PROBLEMS WITH US PROPOSALS. (1) APPLICATION OF RECORDKEEPING REQUIREMENTS TO FOREIGN SUBSIDIARIES AND (2) EXTRADITION PROVISIONS DRAWN FROM TERRORISM CONVENTIONS WHICH IMPOSE GREATER OBLIGATIONS ON FRANCE THAN THOSE ESTABLISHED FOR STATES SUCH AS THE US WHICH REQUIRE TREATIES AS A CONDITION FOR EXTRADITION. DE LA CHARRIERE CHARACTERIZED REMAINING CONFIDENTIAL

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QUESTIONS AS TECHNICAL ISSUES THAT CAN BE WORKED OUT IN DUE COURSE. US DEL INDICATED IT WOULD ENDEAVOR TO MEET BASIC FRENCH CONCERNS AND WOULD NOT LET THESE QUESTIONS STAND IN THE WAY OF AN AGREEMENT.

3. DURING OECD CONSULTATIONS MAY 31-JUNE 2 IN WHICH ALL MAJOR OECD GOVERNMENTS EXCEPT ITALY PARTICIPATED, FRENCH MAINTAINED COOPERATIVE ATTITUDE AND CONSIDERABLE PROGRESS WAS MADE ON OUTSTANDING ISSUES. ALTHOUGH NO FINAL DECISIONS WERE TAKEN, MOST DELEGATIONS WELCOMED NEW US PROPOSAL ON RECORDKEEPING. HOWEVER, ALL DELEGATES SPEAKING TO THIS TEXT SUPPORTED FRENCH VIEW THAT CONTRACTING STATES COULD NOT REGULATE ACTIVITIES OF CORPORATIONS ORGANIZED UNDER THE LAWS OF OTHER COUNTRIES. US DEL STRESSED CONCERN THAT OMISSION OF SUBSIDIARIES WOULD LEAVE A GAP IN SYSTEM OF RECORDKEEPING AND INVITED NEW PROPOSALS TO DEAL WITH THIS PROBLEM. HOWEVER, WE INDICATED THAT USG

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WOULD HAVE TO ACCOMMODATE A CONSENSUS ON THIS ISSUE.

4. OECD DELS ALSO APPEARED TO ACCEPT NEW US TEXT OF
ARTICLE 4 WHICH WOULD ESTABLISH BROAD JURISDICTION OF
CONTRACTING STATES AS TO OFFENSES COMMITTED IN THEIR
TERRITORY OR BY THEIR OFFICIALS, BUT OTHERWISE LIMITS
JURISDICTION OVER BRIBERY OF FOREIGN OFFICIALS BY
NATIONALS TO CASES INVOLVING SUBSTANTIAL PAYMENTS AND
PROVIDED THAT AN ELEMENT OF THE OFFENSE OR AN ACT
AIDING OR ABETTING THE OFFENSE IS CONNECTED WITH THE
TERRITORY OF THE CONTRACTING STATE. HOWEVER, THE UK
AND FRG INDICATED THEY WISHED AGREEMENT TO PROVIDE
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DISCRETION FOR CONTRACTING STATES TO WITHHOLD PROSECU-

TION IN CASES OF FOREIGN BRIBERY WHEN THE GOVERNMENT OF THE OFFICIAL CONCERNED DOES NOT REQUEST SUCH PROSECUTION OR ACT AGAINST A GUILTY OFFICIAL. JAPAN INDICATED IT COULD CONSIDER CRIMINALIZATION OF BRIBERY OF FOREIGN OFFICIALS, BUT EXPRESSED CONCERNS SIMILAR TO UK AND FRG.

5. DURING COURSE OF THESE DISCUSSIONS, A NEW TEXT OF ARTICLE 5 WAS DEVELOPED TO MAKE CLEAR THAT THE OBLIGATION TO PROSECUTE IN CASES WHERE JURISDICTION IS ESTABLISHED UNDER ARTICLE 4 DOES NOT DEPEND ON RECEIPT OF A REQUEST FOR EXTRADITION. THERE WAS ALSO USEFUL DISCUSSION, TENDING TO NARROW DIFFERENCE, OF THE DEFINITION OF PUBLIC OFFICIAL AND INTERNATIONAL COMMERCIAL TRANSACTIONS, AND DECISIONS WERE TAKEN ON SEVERAL LESSER POINTS.

6. IN RESPONSE TO DIRECT QUESTIONS, US DEL INDICATED THAT USG HAS NOT CHANGED ITS POSITION ON ISSUES RELATING TO INVESTMENT IN SOUTHERN AFRICA. THERE WAS WIDESPREAD CONCERN THAT G-77 INSISTENCE ON AFRICAN PROPOSALS TO PROHIBIT PAYMENTS OF TAXES AND ROYALTIES TO RHODESIA AND NAMABIA COULD SABOTAGE CONFERENCE ON ILLICIT PAYMENTS AND SWISS DEL STATED THAT GOS WOULD NOT WISH TO PROCEED WITH A DIPLOMATIC CONFERENCE IF THIS ISSUE WAS ON THE AGENDA AS PART OF AN AGREEMENT ON BRIBERY. OTHER DELS APPEARED TO AGREE WITH US SUGGESTION THAT WORKING GROUP DISCUSS THIS ISSUE AT ITS NEXT SESSION AND ATTEMPT TO AVOID CONFRONTATION WITHOUT MAKING SUBSTANTATIVE CONCESSIONS. HOWEVER, IT IS EVIDENT THAT AFRICAN INSISTENCE ON TAKING THIS ISSUE TO A DIPLOMATIC CONFERENCE, PARTICULARLY IF THE CONFIDENTIAL

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BRACKETS WERE REMOVED FROM AFRICAN TEXT BY VOTE OF WORKING GROUP, WOULD THREATEN OECD SUPPORT OF DIPLOMATIC CONFERENCE AT JULY ECOSOC MEETING.

7. INFORMAL REACTION OF SEVERAL DELEGATIONS TO SECRETARY VANCE'S LETTER (REF A) AND TO US PROPOSAL OF LANGUAGE FOR OECD COMMUNIQUE (REF B) WERE ESSENTIALLY POSITIVE. HOWEVER, THERE WILL BE SUGGESTIONS TO SOFTEN THE COMMUNIQUE TEXT. FRANCE, FOR EXAMPLE, WOULD LIKE COMMUNIQUE TO NOTE THE MINISTERS' SATISFACTION WITH THE PROGRESS BEING MADE ON AN AGREEMENT ON ILLICIT PAYMENTS AND TO EXPRESS THE MINISTERS' SUPPORT FOR CONCLUSION OF AN AGREEMENT BY A CONFERENCE OF PLENIPOTENTIARIES AS SOON AS POSSIBLE.
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Message Attributes

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Secure: OPEN
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Subject: ECOSOC WORKING GROUP ON CORRUPT PRACTICES
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